

1 APPEARANCES

2 IN BEHALF OF THE PLAINTIFF BAPPI LAHIRI:

3 LAW OFFICE OF ANTHONY KORNARENS
4 BY: ANTHONY KORNARENS, ESQ.
5 1640 FIFTH STREET, SUITE 214
6 SANTA MONICA, CALIFORNIA 90401

7 IN BEHALF OF THE PLAINTIFF SAREGAMA INDIA LTD.;

8 EMLING FORENSIS PC
9 BY: MICHAEL J. EMLING
10 100 OCEANGATE, SUITE 1200
11 LONG BEACH, CALIFORNIA 90802

12 AND

13 JOSEPH E. PORTER, III
14 206 3RD STREET
15 SEAL BEACH, CA 90740

16 IN BEHALF OF THE DEFENDANTS:

17 JEFFREY GOLDMAN
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1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 4, 2006; 1:42 P.M.

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3 THE CLERK: CASE NUMBER 2, CIVIL DOCKET NUMBER
4 02-830-RJK, BAPPI LAHIRI VERSUS UNIVERSAL MUSIC AND VIDEO, ET
5 AL, AND ALSO THE CONSOLIDATED CASE CIVIL DOCKET NUMBER
6 02-9856-RJK, SAREGAMA INDIA LIMITED VERSUS YOUNG, ET AL.

7 WILL COUNSEL PLEASE STATE THEIR APPEARANCES.

8 MR. KORNARENS: GOOD AFTERNOON, YOUR HONOR.
9 ANTHONY KORNARENS FOR PLAINTIFF BAPPI LAHIRI.

10 THE COURT: WELCOME, SIR.

11 MR. PORTER: JOSEPH E. PORTER, III, CO-COUNSEL FOR
12 SAREGAMA.

13 IT'S A PLEASURE TO APPEAR, YOUR HONOR.

14 MR. EMLING: GOOD AFTERNOON. MICHAEL EMLING, ALSO
15 CO-COUNSEL FOR SAREGAMA.

16 MR. GOLDMAN: GOOD AFTERNOON, YOUR HONOR. JEFF
17 GOLDMAN FOR THE DEFENDANTS.

18 THE COURT: THE COURT HAS BEFORE IT A
19 PRE-CONFERENCE SCHEDULE. AND THERE HAS BEEN SUBMITTED A
20 PROPOSED PRETRIAL CONFERENCE ORDER, WHICH HAS BEEN REVIEWED
21 FULLY, AS WELL AS THE REST OF THE RECORD BY THE COURT IN
22 PREPARATION FOR TODAY'S PROCEEDING.

23 I WAS STRUCK BY SO MANY MATTERS THAT OUGHT TO HAVE
24 THE ATTENTION OF COURT AND COUNSEL.

25 FIRST OF ALL, THERE'S A WHOLE COLLECTION OF

1 SO-CALLED IN LIMINE MOTIONS. I WANT TO TELL YOU THAT
2 ORDINARILY I DON'T REVIEW SO-CALLED IN LIMINE MOTIONS ON THE
3 EVE OF TRIAL ABSENT SOME COMPELLING REASON TO DO SO BECAUSE
4 USUALLY THOSE ARE MATTERS BETTER ATTENDED TO AT THE TIME THEY
5 ARISE IN THE TRIAL. AND, AS A RESULT, THE COURT IGNORES THEM
6 AT THE MOMENT EXCEPT THE FACT THAT THEY ARE BEFORE THE
7 COURT.

8 NOW, IF THERE ARE ANY ONE OF THOSE IN LIMINES --
9 AND YOU BOTH RECEIVED -- BRING SOME. IS THERE ANY ONE OF YOU
10 WHO FEELS THAT THERE'S A COMPELLING REASON TO RULE
11 PRETRIAL -- AND THAT IS, RIGHT NOW -- ON ANY ONE OF THOSE
12 SO-CALLED MOTIONS?

13 MR. KORNARENS: ON BEHALF OF PLAINTIFFS, NO, YOUR
14 HONOR.

15 MR. GOLDMAN: ON BEHALF OF THE DEFENDANTS, I THINK
16 THE ANSWER IS THE SAME, NO. THE ONLY THING I WOULD ASK YOUR
17 HONOR -- OR WOULD MENTION TO THE COURT IS THAT TWO OF OUR
18 MOTIONS, ONLY ONE OF WHICH IS OPPOSED, BUT TWO OF OUR MOTIONS
19 IN LIMINE DEAL WITH THE NATURE AND EXTENT OF THE EXPERT
20 TESTIMONY TO BE GIVEN BY THE OTHER SIDE. AND, OBVIOUSLY,
21 THOSE WOULD HAVE TO BE RULED ON BEFORE THE EXPERTS WERE TO
22 TESTIFY.

23 THE COURT: YES. AND THAT MOTION RAISES ALL THE
24 QUESTIONS ENCOUNTERED FOR A NUMBER OF RECENT YEARS IN EXPERT
25 OR OPINION TESTIMONY. AND IT LENDS ITSELF, PERHAPS, BEST OF

1 ALL, TO DEFERRED RULINGS.

2 HAVE THERE BEEN EXCHANGED BETWEEN THE PARTIES
3 EXPERTS' WRITTEN POINTS --

4 MR. GOLDMAN: YES, YOUR HONOR.

5 THE COURT: THAT IS, ALL EXPERT OPINIONS WHICH ARE
6 ANTICIPATED TO BE CALLED HAVE BEEN REDUCED TO WRITING AND
7 EXCHANGED BETWEEN THE PARTIES.

8 IS THAT A CORRECT UNDERSTANDING?

9 MR. GOLDMAN: YES, YOUR HONOR.

10 (ALL COUNSEL RESPOND "YES, YOUR HONOR" AT THE SAME
11 TIME.)

12 THE COURT: AND YOU UNDERSTAND, I GATHER, THAT THE
13 PROCEDURE WE FOLLOW HERE WITH RESPECT TO EXPERT OPINIONS IS
14 THAT THE PARTY CALLING THE EXPERT DOES CALL HIM, HE'S SWORN
15 ON THE STAND, AND HIS DIRECT TESTIMONY CONSISTS OF THE
16 READING OF HIS WRITTEN REPORT, FOLLOWED BY CORRECTIONS. AND
17 THAT'S THE PARAMETER -- OR THOSE ARE THE PARAMETERS OF EXPERT
18 TESTIMONY WHICH WE DO PERMIT.

19 IT'S UNDERSTOOD THAT WE PROCEED THAT WAY, IS IT?

20 MR. PORTER: YES, YOUR HONOR.

21 (ALL COUNSEL RESPOND "YES, YOUR HONOR" AT THE SAME
22 TIME.)

23 THE COURT: THERE'S SOME QUESTION AS TO ONE OF THE
24 PROPOSED EXPERTS YOU'RE REFERRING TO AS NOT AN EXPERT. NOT A
25 CPA OR NOT QUALIFIED BY EXPERT SPECIAL EDUCATION, TRAINING,

1 AND EXPERIENCE.

2 THAT IS TRUE, IS IT?

3 WHO IS IT?

4 MR. KORNARENS: THAT WOULD BE MR. TISDALE, YOUR
5 HONOR.

6 THE COURT: AND WHAT ABOUT IT? IS THAT SOMETHING
7 WE OUGHT TO ADDRESS NOW?

8 MR. KORNARENS: THERE'S ALSO ANOTHER EXPERT, PETER
9 MANUEL, WHERE THE PLAINTIFFS ARE MAKING THE SAME CONTENTION.

10 THE COURT: IS THAT --

11 MR. KORNARENS: IN OTHER WORDS, THAT THE EXPERT IS
12 NOT QUALIFIED AS AN EXPERT --

13 THE COURT: IS THAT THE ONE YOU BOTH ANTICIPATE
14 CALLING?

15 MR. KORNARENS: WELL, PLAINTIFFS INTEND TO CALL
16 RAPHAEL TISDALE, AND I BELIEVE THE DEFENDANTS ARE CHALLENGING
17 MR. TISDALE. DEFENDANTS INTEND TO CALL PETER MANUEL, AND
18 PLAINTIFFS ARE CHALLENGING MR. MANUEL.

19 THE COURT: WHAT IS THE NATURE OF THE EXPERT
20 TESTIMONY HERE? THAT IS, DEALING WITH REPORTS AND CLAIMS FOR
21 DAMAGES?

22 MR. GOLDMAN: IN THE CASE OF MR. TISDALE, I BELIEVE
23 THAT'S LARGELY THE CASE, YOUR HONOR.

24 MR. EMLING: YES. AND MR. TISDALE WILL BE
25 TESTIFYING ABOUT THE ACCURACY OF DEFENDANTS' PROPOSED COST

1 OFFSETS AS SET FORTH IN THEIR REPORT.

2 THE COURT: WELL, WILL THERE BE SOME AGREED FACTS
3 BETWEEN THEM AS TO WHAT THE REPORTS ARE AND THE AUTHENTICITY
4 OF THE REPORTS? OR NOT?

5 MR. EMLING: I DON'T THINK THERE'S VERY MUCH IN THE
6 WAY OF AGREED FACTS, YOUR HONOR.

7 BUT THERE ARE SOME AGREED FACTS IN THE --

8 THE COURT: IN THE WAY OF WHAT?

9 THERE'S NOT MUCH IN THE WAY OF YOU SAID WHAT?

10 MR. EMLING: AGREED FACTS.

11 IS THAT WHAT YOU'RE ASKING ABOUT?

12 THE COURT: YES, I AM.

13 AT THE MOMENT I WAS ASKING AS TO THE ASSUMED FACTS
14 THAT WILL BE ADDRESSED BY THE EXPERT. I MAKE THE SAME
15 INQUIRY THOUGH. THIS STRANGE PRETRIAL CONFERENCE ORDER ON
16 THE ONE HAND SAYS "THERE ARE NO AGREED FACTS." LATER ON IT
17 SAYS "THE FOLLOWING FACTS ARE ADMITTED BY THE PARTIES."

18 NOW, I DON'T KNOW WHAT THE DIFFERENCE IS BETWEEN
19 AGREED FACTS AND ADMITTED FACTS.

20 IS THERE ANY DIFFERENCE?

21 MR. GOLDMAN: I BELIEVE, YOUR HONOR, THE
22 DISTINCTION THAT WE WERE ATTEMPTING TO DRAW, HOWEVER
23 INARTFULLY, WAS THAT WE AGREED ON CERTAIN FACTS BUT PERHAPS
24 WE DISAGREED ON WHETHER THOSE FACTS WERE RELEVANT OR
25 ADMISSIBLE.

1 THE COURT: WELL, YOU KNOW, AT PRETRIAL CONFERENCE
2 THERE IS NOTHING MORE IMPORTANT TO THE COURT TO EXPLORE THAN
3 THE AGREED FACTS AND THE DISAGREED FACTS. BECAUSE BY
4 CONSIDERING THE TWO TOGETHER, THERE EMERGE ISSUES TO BE
5 TRIED. AND THE PARAMETER AND PURPOSE AT THE MOMENT IS FOR
6 THE COURT TO FIND OUT WHAT KIND OF A CASE IS HERE FOR TRIAL,
7 HOW MUCH TIME DOES IT NEED FOR THE TRIAL OF THE CASE.

8 OBVIOUSLY, WHEN THERE ARE A LOT OF ADMITTED FACTS
9 OR AGREED FACTS, THE ISSUES REMAINING TO BE TRIED AND
10 ACTUALLY CALLING FOR TESTIMONY BEFORE THE JURY IS NEGLIGIBLE.
11 AND IN THAT RESPECT, I CAN'T TELL WHAT THIS CASE IS ABOUT
12 REALLY.

13 WHO WANTS TO TELL ME WHAT IT'S ABOUT IN THAT SENSE?

14 MR. GOLDMAN: I'LL TAKE A SHOT, YOUR HONOR, IF I
15 MAY.

16 THE COURT: YES, SIR.

17 MR. GOLDMAN: IT SEEMS TO US, AT LEAST FROM THE
18 DEFENSE SIDE, THAT THERE ARE REALLY THREE PRIMARY ISSUES TO
19 BE TRIED. ISSUE NUMBER ONE IS THE ORIGINALITY OF THOSE
20 PORTIONS OF THE PLAINTIFFS' SONG THAT WERE ALLEGED TO HAVE
21 BEEN USED BY THE DEFENDANTS.

22 THE COURT: AND HOW WILL THAT COME BEFORE THE JURY?

23 MR. GOLDMAN: I SUSPECT THAT MR. LAHIRI, THE
24 ALLEGED AUTHOR OF THE PLAINTIFFS' SONG, WILL TESTIFY AS TO
25 HOW HE WROTE IT.

1 THE COURT: WHAT DOES THAT MEAN "HOW HE WROTE IT"?

2 MR. GOLDMAN: I BELIEVE THAT HE TESTIFIED HE WAS
3 ALONE IN A ROOM AND HE SAT DOWN AND WROTE THE SONG. SO THERE
4 ARE NO CORROBORATING WITNESSES.

5 AND OUR EXPERT MUSICOLOGIST, MR. MANUEL, WILL
6 TESTIFY TO THE LACK OF ORIGINALITY OF WHAT MR. LAHIRI WROTE.

7 THE COURT: AND WILL THE SONG BE PLAYED BEFORE THE
8 JURY?

9 MR. GOLDMAN: I SUPPOSE THAT WILL BE UP TO THE
10 PLAINTIFFS. BUT I SUSPECT THE ANSWER IS PROBABLY YES.

11 THE COURT: WHAT DOES THE PLAINTIFF SAY?

12 MR. KORNARENS: YES, YOUR HONOR, THE SONG WILL BE
13 PLAYED BEFORE THE JURY. MR. TESTA AND MR. LAHIRI WILL
14 TESTIFY THAT HE AUTHORED IT. AND, OF COURSE, HE REGISTERED
15 IT; AND THERE'S A PRESUMPTION OF VALIDITY AS TO THE FACTS
16 STATED IN THE REGISTRATION --

17 THE COURT: YES. BUT MY QUESTION WAS DIFFERENT.
18 MY QUESTION WAS WILL A JURY, AS PART OF THE EVIDENCE IN THE
19 CASE, HEAR THE DISPUTED SONG PLAYED?

20 MR. KORNARENS: YES.

21 MR. EMLING: YES, YOUR HONOR.

22 THE COURT: AND THEY ARE TO USE THEIR JUDGMENT AND
23 DISCRETION AND THE RULES OF THE LAW THAT APPLY TO EVALUATE
24 THAT AS AN ISSUE FOR THEM TO DECIDE EITHER YES OR NO.

25 IS THAT NOT CORRECT?

1 MR. KORNARENS: NO, I DON'T BELIEVE THAT IS
2 CORRECT, YOUR HONOR. I DON'T BELIEVE THE DEFENDANTS HAVE ANY
3 EVIDENCE WHATSOEVER THAT'S ADMISSIBLE TO THE EFFECT THAT
4 MR. LAHIRI DID NOT WRITE THE SONG. MR. MANUEL'S REPORT DOES
5 NOT SAY THAT HE DID NOT WRITE IT; IT SIMPLY SAYS THAT
6 PORTIONS OF INDIAN FOLK SONGS BEAR SOME SIMILARITY, AND OTHER
7 VAGUE REFERENCES LIKE THAT, TO MR. LAHIRI'S WORK. AND
8 THERE'S NO --

9 THE COURT: HOLD ON.

10 YOU ARE THEREBY TELLING ME THAT THE JURY MUST HAVE
11 EVIDENCE TO TELL THEM THAT THAT WHICH THEY HEARD IS IN SOME
12 WAY A COPY OF SOMETHING ELSE THEY HEARD?

13 MR. KORNARENS: NO. NO. THE OTHER WAY AROUND,
14 YOUR HONOR.

15 MR. LAHIRI WILL PLAY HIS UNDERLYING SONG -- OR
16 HE'LL TESTIFY THE UNDERLYING SONG THAT HE WROTE WAS IN FACT
17 THE SONG THAT HE WROTE.

18 AFTER THAT, IN ANOTHER PHASE OF THE TRIAL, WE WILL
19 PLAY THE DEFENDANT'S SONG, WHICH INCORPORATES VERBATIM PARTS
20 OF MR. LAHIRI'S SONG.

21 SO THERE ARE TWO DIFFERENT STEPS TO THIS. THE
22 INITIAL STEP --

23 THE COURT: WELL, I TAKE IT FROM WHAT YOU NOW SAY
24 THERE CAN BE NO DISPUTE AS TO COPYING WITH THE EVIDENCE BEING
25 PRESENTED IN THE MANNER YOU PRESENT IT?

1 MR. KORNARENS: CORRECT. I BELIEVE THAT.

2 THE COURT: I SEE.

3 AND THEY'LL HAVE AN INSTRUCTION ON THAT I SUPPOSE,
4 WILL THEY NOT?

5 MR. KORNARENS: YES, WE WILL SUBMIT ONE, YOUR
6 HONOR.

7 MR. EMLING: WE DON'T ENTIRELY AGREE WITH THAT,
8 YOUR HONOR. IN FACT, THE COURT HAS ALREADY FOUND AT THE
9 SUMMARY JUDGMENT STAGE THERE ARE ISSUES OF FACT AS TO WHETHER
10 CONSTITUENT ELEMENTS OF THE PLAINTIFFS SONG THAT ARE ORIGINAL
11 WERE COPIED, WHICH IS THE STANDARD.

12 THE COURT: YES. I UNDERSTAND. IN FACT, ONE OF
13 THE THINGS THAT PUZZLES THE JUDGE, AS WE SIT ON THE EVE OF
14 TRIAL, IS THIS IS SUPPOSED TO BE -- IS WHAT IS THE STATE OF
15 THE RECORD AS TO PREVIOUS RULINGS MADE ON SUMMARY JUDGMENT
16 MOTIONS AND WHAT IS LEFT IN THE CASE FOR TRIAL CONSIDERING
17 THOSE RULINGS.

18 MR. KORNARENS: YOUR HONOR --

19 THE COURT: WHO WANTS TO TELL ME WHAT THE SITUATION
20 IS IN THAT REGARD?

21 MR. KORNARENS: I WILL, YOUR HONOR, ON BEHALF OF
22 THE PLAINTIFFS. ANTHONY KORNARENS.

23 THE COURT HAS GRANTED SUMMARY JUDGMENT ON THE LOSS
24 OF CREDIT CLAIM. SO THAT IS NO LONGER AN ISSUE IN THE CASE.
25 PLAINTIFFS WILL NOT BE PERMITTED TO PRESENT DAMAGES REGARDING

1 THAT CLAIM, AND THERE WILL BE NO CLAIM ON THE LOSS OF CREDIT.

2 THE COURT HAS ALSO GRANTED SUMMARY ADJUDICATION TO
3 THE EFFECT THAT LAHIRI AND SAREGAMA, THE CO-PLAINTIFFS, OWNED
4 A VALID COPYRIGHT. SO THAT ISSUE HAS BEEN RESOLVED AS
5 WELL --

6 THE COURT: LET ME PUT A QUESTION THERE. THAT IS,
7 THOSE TWO PLAINTIFFS JOINTLY ARE THE COPYRIGHT OWNERS.

8 IS THAT WHAT YOU'RE SAYING?

9 MR. KORNARENS: YES, SIR.

10 THE COURT: THERE WAS A DESPUTE AT ONE TIME?

11 MR. KORNARENS: CORRECT.

12 THE COURT: BUT THAT DISPUTE IS RESOLVED, IS IT?

13 MR. KORNARENS: CORRECT.

14 THE COURT: ALL RIGHT. GO AHEAD.

15 MR. KORNARENS: SO WHAT I BELIEVE IS LEFT FOR TRIAL
16 IS, AS MR. GOLDMAN HAS ARTICULATED, WHETHER OR NOT THE SONG,
17 THE UNDERLYING SONG AND THE RECORDING, WAS COPIED -- WE
18 BELIEVE IT WAS OBVIOUSLY -- AND IF SO, THE EXTENT OF THE
19 DAMAGES.

20 DAMAGES, BASED ON THE COURT'S PRIOR RULING, WILL BE
21 DETERMINED BY A COMBINATION OF LOSSES INCURRED BY PLAINTIFFS
22 AND PROFITS MADE BY DEFENDANTS -- OR THE VARIOUS
23 INDIVIDUALIZED DEFENDANTS AS IN THE EXTENT THE TWO ARE
24 DUPLICATIVE. STATUTORY DAMAGES ARE NO LONGER A PART OF THE
25 CASE BASED ON THE COURT'S PRIOR RULING.

1 THE COURT: YOU EMPHASIZED THERE THE POINT I RAISED
2 AS TO WHAT'S LEFT IN THIS CASE WHEN YOU TALK ABOUT THE
3 EXPERTS AND HOW THEY WILL GIVE THEIR OPINION, I GUESS IT IS,
4 AS TO WHAT THE PROFITS OR LOSSES WERE RESPECTIVELY.

5 AND I ASKED PREVIOUSLY IS THERE ANY DISPUTE AS TO
6 THE FACTS THAT ARE LAID BEFORE THE RESPECTIVE EXPERTS,
7 SO-CALLED, AS FACTS.

8 NOW I'M A LITTLE FURTHER. ORDINARILY IN A CASE OF
9 PROFITS OR LOSSES, THERE ARE VOLUMINOUS RECORDS PRESENTED.

10 THE RECORDS PRESENTED HERE, I TAKE IT, ARE NOT IN
11 DISPUTE AS TO THEIR AUTHENTICITY, ARE THEY?

12 MR. KORNARENS: TO SOME EXTENT THEY ARE, YOUR
13 HONOR. THE DEFENDANTS ARE RELYING ON A SUMMARY PREPARED IN
14 CONNECTION WITH LITIGATION, AND THEY'RE LUMPING TOGETHER ALL
15 OF THE DEFENDANTS IN TERMS OF EXPENDITURES AND MONIES
16 RECEIVED. ALLOCATION OF MONIES RECEIVED AND ALLOCATION OF
17 EXPENDITURES AMONG THE VARIOUS SPECIFIC DEFENDANTS IS A KEY
18 ISSUE IN THE CASE. AND THOSE FACTS ARE DISPUTED
19 UNFORTUNATELY.

20 THE COURT: HOW ARE THOSE FACTS GOING TO BE
21 LITIGATED?

22 MR. KORNARENS: THEY'RE GOING TO BE LITIGATED BY
23 PLAINTIFFS PRESENTING THE EVIDENCE THEY HAVE AS TO WHAT EACH
24 DEFENDANT MADE, TO THE EXTENT WE'VE BEEN ABLE TO GLEAN IT
25 FROM INCOMPLETE DISCOVERY RESPONSES, AND CHALLENGING THEIR

1 CLAIMED OFFSETS --

2 THE COURT: ALL RIGHT. ALL RIGHT.

3 SO IN OTHER WORDS, THERE WILL BE RESPECTIVELY BY
4 THE PARTIES PRESENTED SOME RECORDS SETTING FORTH NUMBERS AND
5 AS TO WHICH -- THE AUTHENTICITY AS TO WHAT THEY ARE. THAT
6 IS, RECORDS OF DEFENDANT THUS AND SO AND SO ON, WILL NOT BE
7 DISPUTED BUT AS TO WHETHER THEY EFFECTIVELY REFLECT WHAT THEY
8 PURPORT TO REFLECT.

9 IS THAT A CORRECT UNDERSTANDING?

10 MR. KORNARENS: YES, SIR.

11 MR. PORTER: JOIN, YOUR HONOR.

12 MR. GOLDMAN: IF YOU'RE WAITING FOR ME TO AGREE,
13 YOUR HONOR, I'M NOT SURE I DO. BUT I'M NOT ENTIRELY SURE I
14 FULLY DISAGREE EITHER.

15 I THINK WHAT HAS HAPPENED IN THE CASE SO FAR IS WE
16 AS DEFENDANTS HAVE PRODUCED VOLUMINOUS DOCUMENTS. THEY'RE
17 VOLUMINOUS BUSINESS RECORDS, THOUSANDS UPON THOUSANDS OF
18 PAGES OF BUSINESS RECORDS, WHICH REFLECT THAT THIS ALBUM WAS
19 EXTREMELY UNSUCCESSFUL. THE DEFENDANT'S LOSSES ON THIS ALBUM
20 WERE IN THE MILLIONS OF DOLLARS.

21 AND THE PLAINTIFFS EXPERT, MR. TISDALE, WHO IS NOT
22 AN ACCOUNTANT, BY THE WAY, BUT SIMPLY A LAWYER --

23 THE COURT: I LIKE THAT.

24 MR. GOLDMAN: -- EVEN IF MR. TISDALE WERE ALLOWED
25 TO TESTIFY ABOUT THE ACCURACY OF OUR RECORDS -- WHICH WE

1 WOULD HOPE THE COURT WOULD NOT PERMIT -- EVEN IF HE WERE
2 PERMITTED TO DO THAT, HE HAS ADMITTED IN HIS DEPOSITION HE
3 DOESN'T CHALLENGE THE ACCURACY OF OUR RECORDS. HE JUST SAYS
4 THINGS LIKE, "WELL, YOU SAY IT COSTS YOU A DOLLAR OR
5 SOMETHING TO MAKE A CD, I THINK CAN I GO GET A CD
6 MANUFACTURED FOR SIXTY-FIVE CENTS. THAT'S WHAT I THINK IT
7 COSTS."

8 SO THAT'S THE NATURE OF MR. TISDALE'S PROFFERED
9 TESTIMONY IN REGARD TO THE DEFENDANT'S COSTS.

10 THE COURT: YOU KNOW, THE WHOLE MATTER OF OPINION
11 EXPERT TESTIMONY HAS BEEN AT LEAST PUT TO CHALLENGE IN
12 CASE-BY-CASE METHOD. AS YOU KNOW, THEY'VE NOW TOLD TRIAL
13 JUDGES THAT THEY ARE TO BE GATEKEEPERS, SOME KIND OF BURDEN
14 ON THE TRIAL JUDGE TO SAY THAT COMES IN AND THAT DOESN'T.

15 THE RULE ITSELF, AS YOU KNOW, PROVIDES EXPRESSLY
16 THAT IT SHALL NOT BE EXCLUDABLE EVIDENCE OF THE MERE FACT
17 THAT IT ADDRESSES THE FINAL ISSUE. BUT ON THE OTHER HAND,
18 FOR A SET OF RECORDS, THE SAME SET I PRESUME TO BE CONSIDERED
19 BY TWO EXPERTS OR NON-EXPERTS OR WHATEVER THEY ARE, AND
20 EVIDENCE ADDUCED THAT IS IN CONFLICT IN THE SENSE THAT THE
21 JURY WILL BE HELPFUL FOR THE OPINION TESTIMONY AND HAS AN
22 ISSUE THAT THEY HAVE TO AGAIN DECIDE.

23 AND I DON'T YET SEE THAT THERE'S A CASE HERE MADE
24 IN WHICH THAT JURY WILL BE TOLD THAT IT'S ALL ALLOWED
25 NECESSARILY AND HELPFUL TESTIMONY FROM THE EXPERTS IN

1 CONSIDERING AND UNDERSTANDING THE DOCUMENTS THAT ARE IN
2 EVIDENCE BEFORE THEM.

3 I'LL NEED SOME PERSUASION ON THAT SCORE. AND YOU
4 BETTER BEAR IN MIND, WHEN YOU GET TO IT, THAT I WILL HAVE
5 READ THE EXPERT OPINIONS AND I WILL HAVE SUBJECTED TWO OF
6 THEM TO THE GATEKEEPER TEST.

7 YOU KNOW, ON THE OTHER HAND, DESPITE THE FACT THAT
8 THE RULE IS VERY BROAD IN ALLOWING EVEN ULTIMATE FACTS TO
9 COME IN THROUGH EXPERT TESTIMONY, NEVERTHELESS, THE
10 FUNDAMENTAL THRESHOLD REQUIREMENT IS THAT BEFORE YOU MAY CALL
11 A WITNESS TO ADDRESS SOME PARTICULAR ITEM OF EVIDENCE AS AN
12 EXPERT IT MUST BE SHOWN WHATEVER THE EVIDENCE IS THE JURY
13 NEEDS THE HELP OF AN EXPERT.

14 BRAIN SURGERY. BRAIN SURGERY AND SO MANY OTHER
15 SIMILAR THINGS OBVIOUSLY ARE BEYOND THE COMMON UNDERSTANDING
16 OF A JUROR AND NEED TO BE EXPLAINED AS TO WHAT THEY ARE AND
17 HOW THEY WERE DONE AND WHAT THE COMMONLY ACCEPTED PRACTICES
18 IS AND THE LIKE.

19 BUT WITH RESPECT TO THE EVIDENCE THAT'S HERE
20 CONSIDERED, WHO WANTS TO TELL ME WHY THE JURY NEEDS THE
21 TESTIMONY OF EITHER EXPERT?

22 MR. GOLDMAN: WELL, YOUR HONOR, OUR EXPERT -- THE
23 DEFENDANT'S EXPERT IS NOT A ACCOUNTING EXPERT AT ALL. WE'LL
24 HAVE AN IN-HOUSE WITNESS TESTIFY AS TO THE ACCURACY OF THE
25 DEFENDANT'S BUSINESS RECORDS. OUR EXPERT IS A MUSICOLOGIST,

1 WHO WILL BE TESTIFYING ON A DIFFERENT POINT. ON THE
2 ORIGINALITY OF THE PLAINTIFFS' SONG, THE SONG THAT WAS
3 ALLEGEDLY INFRINGED.

4 THE COURT: THAT'S THE EXPERT TESTIMONY?

5 MR. GOLDMAN: THAT'S THE DEFENDANT'S EXPERT.

6 THE PLAINTIFFS HAVE FOUR OR FIVE OR SIX EXPERTS.
7 I'M NOT SURE. I'VE LOST COUNT --

8 THE COURT: ON THAT ISSUE?

9 MR. GOLDMAN: ON A VARIETY OF ISSUES.

10 ONE OF THE EXPERTS, MR. TISDALE, IS THE ATTORNEY
11 WHO WOULD BE TESTIFYING HE DOESN'T THINK OUR ACCOUNTING
12 DOCUMENTS ARE ACCURATE.

13 AND I WOULD AGREE WITH YOUR HONOR TO THE EXTENT
14 THAT YOUR HONOR AGREES WITH ME THAT MR. TISDALE IS NOT AN
15 APPROPRIATE WITNESS ON THAT POINT AND SHOULD NOT BE
16 TESTIFYING AND WOULD NOT BE HELPFUL TO THE JURY.

17 THE COURT: WILL THERE BE ANYTHING UNUSUAL IN THE
18 FORM OF THE RECORDS? THAT IS, EVERY BUSINESS MAINTAINS, IN A
19 PRETTY FORMAL AND DEFINITIVE WAY, BOOKS AND RECORDS IN WHICH
20 ENTRIES ARE MADE IN THE REGULAR COURSE OF BUSINESS AND
21 REGULARLY -- AND THAT THE ANSWER TO THE QUESTION PRESENTED
22 THAT IS PROPER PROFIT, LOSS AND, IF SO, HOW MUCH IS
23 DETERMINED BY ARITHMETIC CONSIDERATION OF THOSE NUMBERS.
24 WHAT'S DIFFERENCE HERE?

25 MR. EMLING: I THINK THE POINT IS THE DEFENDANTS

1 ARE RELYING ON A CONSTRUCTIVE PROFIT AND LOSS STATEMENT MADE
2 FOR THE LITIGATION. AND THERE'S PROBLEMS WITH IT. THE
3 PROBLEM IS THAT THERE ARE MULTIPLE ENTITIES INVOLVED AS
4 DEFENDANT IN THIS CASE, AND THESE MULTIPLE ENTITIES WIND UP
5 PAYING MONEY TO EACH OTHER IN THE CONTEXT OF THIS RECORD.
6 AND, THEREFORE, PROFITS TO ONE OR THE OTHER OF THESE
7 DEFENDANTS MAY --

8 THE COURT: WILL VARY.

9 MR. EMLING: -- THEY MAY BE DISGUIZED BY LUMPING
10 THEM ALL INTO ONE BUCKET. THIS IS THE PROBLEM.

11 THE COURT: THIS IS NOT UNUSUAL SITUATION. YOU
12 HAVE A MUSIC MASTER COMPOSER. OBVIOUSLY, IMPORTANT PERSON AS
13 FAR AS THE MUSIC IS CONCERNED. YOU HAVE A LYRIC COMPOSER,
14 OBVIOUSLY OF INTEREST ALSO. AND YOU HAVE THE USUAL MARKETING
15 EXPERTS AND PRODUCTION EXPERTS AND SALES EXPERTS. AND THEY
16 ALL HAVE -- IN THIS CASE, SOME OF -- ALL OF THOSE PEOPLE HAVE
17 SOME ROLE THAT THEY PLAY IN PUTTING THIS ON THE MARKET.

18 IS THAT NOT CORRECT?

19 MR. GOLDMAN: THAT'S TRUE, YOUR HONOR.

20 THE COURT: AND IT'S CONTENTED THEN THAT IT CALLS
21 FOR PRETTY CAREFUL ANALYSIS. ANYBODY CLAIMING EITHER PROFIT
22 ON THE PART OF SOMEBODY OR LOSS ON THE PART OF THEMSELVES
23 WOULD BE REQUIRED TO TREAT THOSE SEPARATE ISSUES IN A MANNER
24 THAT WOULD ENABLE IT -- THE JURY TO IDENTIFY WHAT OUGHT TO BE
25 CREDITED AND WHAT OUGHT TO BE DEBITED.

1 IS THAT AGAIN A CORRECT UNDERSTANDING OF WHAT YOU
2 PLAN TO DO?

3 MR. KORNARENS: YES, SIR.

4 THE COURT: WELL, ALL RIGHT. WE CAN INDULGE A
5 LECTURE THIS MORNING OF TIME ON A PRETRIAL CONFERENCE ONLY
6 BECAUSE WE HAVE THESE TWO MATTERS ON. AND I FOUND THAT 15
7 MINUTES OF PRETRIAL WILL VERY FREQUENTLY REMOVE 15 HOURS FROM
8 THE TIME NECESSARY TO TRY A CASE. AND IT SEEMS TO ME THAT
9 WE'RE MAKING PROGRESS IN THAT DIRECTION HERE IN WHAT WE'RE
10 DOING. SO I INTEND TO CONTINUE ON A BIT WITH THIS.

11 HOW ABOUT SETTLEMENT? HAS ANYTHING BEEN DONE BY
12 WAY OF EXPLORING SETTLEMENT IN THIS CASE?

13 MR. EMLING: YOUR HONOR, ABOUT A YEAR AGO WE HAD
14 OUR CLIENTS OUT FROM INDIA, SAT DOWN WITH MR. GOLDMAN AND
15 REPRESENTATIVES OF UNIVERSAL FOR SOME VERY SERIOUS TALKS.
16 UNFORTUNATELY, AT THAT TIME THERE WERE STILL SOME SUMMARY
17 JUDGMENT MOTIONS OUTSTANDING, WHICH PERHAPS MADE IT A LITTLE
18 BIT DIFFICULT TO CALL THE CASE. AND I THINK WE'RE READY TO
19 PROCEED TO PERHAPS A MAGISTRATE JUDGE PRETTY SOON.

20 THE COURT: DIDN'T IT GO TO A MAGISTRATE?

21 MR. EMLING: NO. IT WAS STRICTLY A GOOD FAITH
22 EFFORT, PRIVATE EFFORT, BETWEEN COUNSEL AND OUR CLIENTS.

23 THE COURT: WHAT DO YOU SUGGEST NOW SHOULD BE DONE
24 IN THAT CONNECTION?

25 MR. GOLDMAN: YOUR HONOR, THE LAST SETTLEMENT

1 PROPOSAL WAS MADE BY THE DEFENDANTS. IT SEEMS TO ME THAT IT
2 WOULD MAKE SENSE FOR US TO SCHEDULE A SETTLEMENT CONFERENCE
3 WITH THE MAGISTRATE JUDGE ALSO FOR THE DEFENDANTS -- OR FOR
4 THE PLAINTIFFS, I'M SORRY, IF THEY WISH, TO MAKE A
5 COUNTEROFFER.

6 THE COURT: AS YOU KNOW, THE RULE CALLS FOR
7 AGREEMENT BETWEEN COUNSEL AS TO WHICH OF THE THREE OPTIONS
8 SHALL BE ADOPTED.

9 MR. EMLING: THE PLAINTIFFS WOULD AGREE WITH THE
10 MAGISTRATE OPTION.

11 THE COURT: HOW ABOUT THE DEFENDANTS?

12 MR. GOLDMAN: YES. WE WOULD AGREE WITH THAT.

13 THE COURT: DO YOU HAVE IN MIND A MAGISTRATE THAT
14 YOU WOULD ASK TO SERVE?

15 MR. KORNARENS: I BELIEVE WE WERE GOING TO ASK
16 MAGISTRATE JUDGE TURCHIN, YOUR HONOR.

17 THE COURT: YOU KNOW, A VERY STRANGE THING IN THE
18 WAY THEY RUN THIS COURT. LONG AGO IN THE CLERK'S OFFICE,
19 THEY ADOPTED THE PRACTICE IN DRAWING A CASE FROM THE WHEEL
20 FOR A PARTICULAR JUDGE. THEY PUT THE DATE, THE NUMBER OF THE
21 CASE, AND THE JUDGE'S INITIALS. LONGSTANDING WAY IT WAS DONE
22 ALWAYS.

23 ALL OF A SUDDEN, THEY ADOPTED THE PRACTICE OF
24 PUTTING SOME MAGISTRATE'S INITIALS THERE TOO. THE IDEA
25 WAS -- IT WAS MORE THAN AN IDEA -- THIS WAS THE MAGISTRATE

1 WHO SHALL BE USED IN THIS CASE WHENEVER A MAGISTRATE IS USED.

2 I PROTESTED TOTALLY IN THAT REGARD. I SAID, "I
3 DON'T REFER MATTERS TO MAGISTRATES. ANY ROUTINE MATTERS I
4 DECIDE WHAT, IF ANYTHING, GOES TO A MAGISTRATE. MANY OF THE
5 JUDGES REFER ALL THEIR DISCOVERY MATTERS THERE. FOR EXAMPLE,
6 THEY AUTOMATICALLY GO TO THAT MAGISTRATE.

7 I DON'T DO ANY SUCH THING AS ALL. AND I SAY TO
8 LAWYERS, AS I SAY TO YOU, IF THERE ARE SOME INITIALS ON MY
9 CASE, MAGISTRATE INITIALS, I'LL IGNORE THEM, UNLESS I DON'T
10 WANT TO IGNORE THEM. AND THAT MAY BE THE JUDGE THAT IS
11 PICKED AS THE SETTLEMENT JUDGE OR IT MAY NOT.

12 DOES ANYONE KNOW THE MAGISTRATE? DO WE HAVE
13 MAGISTRATE INITIALS ON THIS?

14 THE CLERK: YES, YOUR HONOR. THAT'S CORRECT.
15 MAGISTRATE JUDGE CAROLINE TURCHIN IS THE MAGISTRATE ON THIS
16 CASE.

17 THE COURT: ALL RIGHT.

18 YOU UNDERSTAND WHAT HAS BEEN SAID AND WHAT THAT
19 MEANS?

20 CAROLINE TURCHIN IS THE DESIGNATED MAGISTRATE
21 JUDGE. IS SHE SATISFACTORY TO YOU?

22 MR. GOLDMAN: YES, YOUR HONOR.

23 MR. KORNARENS: YES, YOUR HONOR.

24 THE COURT: I'D RATHER HAVE YOU PICK YOUR OWN
25 JUDGE. ALTHOUGH THERE'S A DRAWBACK TO THAT. AND THAT IS

1 SOME MAGISTRATE WHOSE INITIALS HAVE NOT YET BEEN PICKED WILL
2 FREQUENTLY BE TOO BUSY TO GET AROUND TO IT UNTIL FIVE YEARS
3 LATER.

4 I WOULD ENTERTAIN AGREEMENT ON THE PART OF THE
5 COUNSEL FOR A REFERENCE TO A MAGISTRATE FOR SETTLEMENT
6 PURPOSES AGREED UPON UNANIMOUSLY.

7 YOU'RE PREPARED TO DO THAT, ARE YOU?

8 MR. KORNARENS: YOUR HONOR IS FAMILIAR WITH THE
9 FACTS OF THE CASE. DOES YOUR HONOR HAVE A SUGGESTION WHO
10 MIGHT BE THE MOST PRODUCTIVE MAGISTRATE?

11 THE COURT: NO, I DON'T. AND I STAY AWAY FROM
12 THAT. I MADE MYSELF UNPOPULAR ENOUGH BY PICKING AND
13 CHOOSING. AND, FRANKLY, I DON'T -- IN THIS CASE I DON'T
14 THINK IT TAKES A GIANT INTELLECT --

15 MR. KORNARENS: YOUR HONOR --

16 THE COURT: -- TO MAKE SENSE OF THIS AND DECIDE IT.

17 MR. KORNARENS: MAGISTRATE JUDGE TURCHIN HAS BEEN
18 ASSIGNED TO THE CASE, SO THAT SHOULD BE OUR SETTLEMENT JUDGE
19 AS WELL.

20 THE COURT: ALL RIGHT. THERE WILL BE A ORDER
21 ENTERED REFERRING, FOR SETTLEMENT PURPOSES, THE CASE.

22 NOW, IN THE EVENT THAT IT IS NOT SETTLED, I'M --
23 THIS IS THE TIME WHEN IT SHOULD BE SET FOR TRIAL IF IT'S
24 GOING TO BE TRIED.

25 MR. KORNARENS: CORRECT.

1 THE COURT: AND I DON'T EVER SET A CASE FOR TRIAL
2 UNTIL AFTER A PRETRIAL ORDER HAS BEEN SIGNED. AND I'LL LET
3 YOU HAVE A DATE WHICH WILL BE AT LEAST TENTATIVELY ADOPTED AS
4 THE TRIAL DATE IN THE EVENT WE HAVE TO TRY THE CASE.

5 WHAT DATE DO WE HAVE AVAILABLE; MS. CLERK?

6 THE CLERK: TUESDAY, MARCH 6, 2007, AT 9:30.

7 THE COURT: WHAT DO YOU SAY, GENTLEMEN?

8 MR. KORNARENS: IT'S AGREED, YOUR HONOR.

9 MR. GOLDMAN: IT'S FINE.

10 THE COURT: ALL RIGHT. IT'S SO ORDERED.

11 AND THAT DOES NOT IN ANY WAY MINIMIZE THE HOPES AND
12 ANTICIPATION OF THE COURT FOR SETTLEMENT OF THE MATTER.

13 THIS IS AN IDEAL CASE TO BE CONSIDERED AND DECIDED
14 BY ANY LEGALLY TRAINED PERSON OF MUTUAL CHOICE. IT HAS A LOT
15 OF THOSE FACTORS IN IT THAT YOU'D WANT TO KNOW NOT ONLY THE
16 LEGAL SKILLS OF THE NEGOTIATOR, THE ARBITRATOR, WHATEVER HE'S
17 CALLED; THEREFORE, IT MAKES A DIFFERENCE WHO HAS THE JOB.

18 BUT FROM WHAT I KNOW OF THE CASE AND THE
19 MAGISTRATE, THIS CASE WOULD BE FAIR TO BE SETTLED. AND
20 THEREFORE, ALTHOUGH WE HAVE A TENTATIVE TRIAL DATE SET WHICH
21 MAY BE USED, YOU'RE TO PROCEED WITH ALL DISPATCH TO COMPLY
22 WITH THE OBLIGATIONS UNDER THE LOCAL RULES FOR SETTLEMENT.

23 MR. GOLDMAN: YOUR HONOR, MAY I ASK A QUESTION?

24 THE COURT: YES, SIR.

25 MR. GOLDMAN: MR. LAHIRI, ONE OF THE PLAINTIFFS,

1 AND WHO HAS TO CERTAINLY AGREE TO ANY SETTLEMENT, RESIDES IN
2 INDIA. AND IN THE DEFENDANT'S VIEW, IT -- IT'S ABSOLUTELY
3 ESSENTIAL -- OR CERTAINLY IT'S A VERY GOOD IDEA TO HAVE
4 MR. LAHIRI PRESENT HERE FOR THE SETTLEMENT CONFERENCE.

5 I REALIZE THAT'S AN IMPOSITION ON HIM. AND --
6 PERHAPS IF HE COULD BE AVAILABLE BY TELEPHONE THAT WOULD BE
7 SUFFICIENT.

8 BUT I THINK IT WOULD INHIBIT THE SETTLEMENT
9 CONFERENCE IF MR. LAHIRI WASN'T ORDERED TO BE AVAILABLE FOR
10 THE FULL DAY OF THE SETTLEMENT CONFERENCE AT ANY TIME SO THAT
11 HE COULD BE CALLED AND PARTICIPATE FULLY IN THE SETTLEMENT
12 CONFERENCE.

13 THE COURT: DO YOU HAVE IN MIND THE DESIRABILITY,
14 IF NOT THE NECESSITY, OF HIM BEING PRESENT FOR THE ABILITY TO
15 GET THE FINAL WORD "YES, IT'S ACCEPTABLE," OR DO YOU HAVE IN
16 MIND HE SHOULD BE PRESENT BECAUSE HE'S GOING TO BE CALLED AS
17 WITNESS BEFORE THE MAGISTRATE? OR BOTH?

18 MR. KORNARENS: YOUR HONOR, MR. LAHIRI WILL EITHER
19 BE PRESENT OR HE WILL BE AVAILABLE BY PHONE FOR THE ENTIRE
20 DAY WITHOUT A PROBLEM. I CAN SAY THAT ON BEHALF OF HIM.
21 HE'S EAGER TO PARTICIPATE.

22 THE COURT: ALL RIGHT. I MAKE A REFERENCE TO THE
23 JUDGE -- TO THE MAGISTRATE JUDGE. I DON'T SAY A WORD ABOUT
24 THE CASE GOOD, BAD, OR INDIFFERENT. I DON'T EVEN
25 CHARACTERIZE YOU PEOPLE. I DON'T CERTAINLY TELL THEM

1 ANYTHING ABOUT ANY DIRECTION IN WHICH I LEAN. AND I DON'T
2 REQUIRE THAT THE SETTLING JUDGE OR THE ARBITRATOR, IF THAT'S
3 THE ROLE SERVED, MAKE ANY REPORT TO ME OTHER THAN YES OR NO
4 THE CASE IS DISPOSED OF OR IT ISN'T. AND I DON'T WANT TO
5 HEAR ANYTHING OF THE IMPRESSIONS FORMED BY THE MAGISTRATE
6 JUDGE, GOOD, BAD, OR INDIFFERENT, FOR EITHER SIDE, PARTY, OR
7 SO ON. THAT'S ONE PART.

8 THE OTHER IS WHEN THE EFFORTS ARE MADE, THE CASE
9 BECOMES ENTIRELY THE CASE OF THE MAGISTRATE JUDGE FOR ALL
10 PURPOSES WHILE PENDING THERE FOR SETTLEMENT. THAT IS, THE
11 PROCEDURES TO BE FOLLOWED AND THE DATES TO BE FOLLOWED AND
12 THE AMOUNT OF TIME GIVEN AND THE KIND OF BRIEFS. AND
13 OTHERWISE, YOU OUGHT TO BE TOLD WHAT TO DO ABOUT A
14 MAGISTRATE.

15 ANYTHING FURTHER?

16 MR. GOLDMAN: NO, YOUR HONOR.

17 MR. KORNARENS: NO, YOUR HONOR.

18 THE COURT: MS. CLERK, DO WE WANT A FORMAL ORDER OF
19 REFERENCE OR JUST A MINUTE ORDER?

20 THE CLERK: WELL, COUNSEL ACTUALLY SHOULD FILL
21 OUT -- THE COURT HAS A FORM, ADR-01, JUST TO MAKE IT KOSHER.

22 THE COURT: ALL RIGHT. GET WITH THAT, GENTLEMAN,
23 AND SEE THAT IT IS LODGED WITH THE CLERK AS SOON AS POSSIBLE.

24 MR. KORNARENS: YES, YOUR HONOR.

25 THE COURT: ANYTHING FURTHER?

1 MR. GOLDMAN: NO, YOUR HONOR.

2 MR. KORNARENS: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. WE'RE ADJOURNED.

4 (PROCEEDINGS RECESSED AT 2:14 P.M.)

5 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
6 FROM THE RECORD OF THE PROCEEDINGS IN THE
7 ABOVE-ENTITLED MATTER PREPARED IN ACCORDANCE WITH
8 THE FORMATTING REGULATIONS OF THE JUDICIAL
9 CONFERENCE OF THE UNITED STATES.

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12 _____
GAIL PEEPLES
13 COURT REPORTER

DATE

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